

Questions and Answers – February and March 2006

PECFA Informational Sessions

Please email any additional questions or comments to comm47revisions@commerce.state.wi.us. If you experience any difficulty with this link, please call (608) 264-8765.

1. Where a contract exists for a commodity, will we be required to provide a copy of the contract with a reimbursement claim?

No. However, for work performed after May 1st, the Usual and Customary (U&C) reimbursement applies regardless of the terms of any preceding contract.

2. Can an owner hire consultants and contractors to do the work at a greater cost than the reimbursement, then submit a claim and be reimbursed the customary costs and pay the difference to the consultant and contractor?

Yes, however they cannot be paid out of a PECFA loan because the interest would not be eligible.

3. Can a consultant (owner or contractor) receive a volume rebate at the end of the year from a lab or other contractor? (This is in addition to the customary costs that were reimbursed.)

No, this is tantamount to a markup, just paid out as a lump sum later. This could result in a visit from a PECFA field auditor.

4. Can a consultant, contractor or supplier bill additional special costs to the owner outside of the fund for things like scheduled standby because of work by others, special traffic control, after hours work like overnight, special safety situations or a need for extra laborers?

Yes, however they are not eligible for reimbursement and they cannot be paid out of a PECFA loan because the interest would not be eligible.

5. Soil boring/MW permits: If the only “permit” required to install a well, or boring in a right-of-way is for a consultant to send a letter to a county, city or town, along with a map, and the County/City/Town sends a letter back with approval, is the \$210 unit cost reimbursable?

Yes.

6. Is RCO5 – regulatory correspondence, at the discretion of the consultant? Meaning, can a consultant submit correspondence to a Department if the Department hasn’t specifically requested the correspondence?

Yes. However, this reimbursement maximum is limited to 12 per any 12-month period. Copies of the subject correspondence must be included with the claim. This task may not be used to remedy omissions or corrections for previous submittals.

7. Initial site survey – What costs are eligible/applicable if the consultant performs the survey?

Activities IS05 & IS15 are applicable for the initial survey and IS10 is applicable for subsequent surveys. The consultant or a commodity service provider can perform the initial survey. If the consultant does activity IS15, they can also apply IS05.

8. Can a claimant perform their own well abandonments and receive reimbursement under the U&C schedule?

Yes. However, if it is the claimant, then they can only be reimbursed their actual cost or the U&C maximum, whichever is less.

9. How will Interim Actions [47.337 (2) (d)] be handled after 5/1/06?

Notification is still required prior to work being performed, and work performed must be on the U&C schedule.

10. Our annual laboratory bid expires 3/31/06. Do we need to re-bid labs for April?

No.

May we use our existing bid for an additional month?

Yes.

11. Can excavation, monitoring or other cost effective (<\$60K) remediations be performed without prior approval, or evaluation for the public bid process?

Effective 5/1/06, the U&C schedule must be followed. However, <\$60K notification does not exempt the site from the public bid process.

12. What constitutes “professional level work” that would require work to be performed by a PECFA registered consultant, not just supervised by a PECFA registered consultant? Can a firm have one registered consultant supervise multiple offices?

Comm 5.81 (1) specifies the work that must be performed or provided by a PECFA registered consultant, i.e., “professional level investigation, interpretation, design or technical project management services related to a claim.” Examples of these services are listed there, and include conducting site investigations, preparing remedial action plans and alternatives, and interpretation of data for passive or active bio-remediation systems. Individuals who are not PECFA registered consultants are prohibited from performing this work regardless of whether they are supervised by a PECFA registered consultant.

13. “Prior written approval from respective agency required” – Does this mean DNR or Commerce project manager has to send a letter or e-mail prior to the meeting?

Yes.

14. Occasionally consultants stop in unannounced to DNR offices to discuss projects. How does that work or doesn't it work?

There needs to be pre-approval.

15. Is there an hourly rate for the project manager if there is no task category within the U&C schedule?

No. PM costs are included within each applicable task on the U&C schedule.

16. Are direct costs for purchase of potable well construction logs from the Wisconsin Geological Survey reimbursable or included in the task category?

They are included within the rate for Tasks 22 & 23.

17. Will the report preparation fees be treated as a unit rate or as NTE (not to exceed) costs? If we include itemized charges for ½ report can we then submit an invoice for ½ of the unit charge for a report (but not itemized by hours)?

U&C report preparation costs are lump-sum amounts. Yes, consultants may invoice portions, however they must supply that portion of the report that the claimant is being invoiced for. Also be aware that the Report Preparation Breakdown form has been eliminated.

18. Task 8 – Please clarify what costs consultants can charge if they subcontract the well abandonment to a contractor – that is, besides coordination, are they allowed to go to the site, and can they charge the mobilization/demobilization of \$234? Is that the most they can charge for?

If a commodity provider is being utilized for well abandonment, then the consultant reimbursement is limited to Activity WAB05, coordination.

19. If the consultant submits a closure request and it is denied, (such as for requiring four extra probes) will the resubmitted data and subsequent request for closure again be eligible for reimbursement?

See Task 6 (Letter Report). The intent of the letter report under these circumstances would be as a follow-up to the original closure request.

20. Please clarify which UCCS mobilization rate is appropriate for this project. The scope is to install one 15-foot permanent monitoring well with 4.25 inch augers, and to advance two direct push soil borings to 16 feet, each. All of this can be done with a single Geoprobe rig, which has been outfitted with the additional equipment required to turn augers. The question is what mobilization rate should be used for the well driller/Geoprobe. My assumption is that the mobilization for well installation should be used, which I understand to be \$543.00.

Under these circumstances the direct push probe-drilling hybrid accomplishes the same activities as a conventional drill rig. Consequently, Commerce will reimburse MDT05 – drill rig mob/demob.

21. There's a note in the Introduction to the UCCS schedule that addresses MOB/DEMOB that says "MOB/DEMOB will be reimbursed on a per PECFA site basis (not per occurrence)." Can you explain what this means?

If there is more than one occurrence at a site, a consultant cannot charge a mobilization for each occurrence, only for the site.

If we need to mobilize to the site multiple times to install monitoring wells, can multiple mobilizations be charged?

Yes. However, if Commerce sees 2 wells, then 2 more wells, then 3 more wells (i.e., 3 mobs to install 7 wells), then reimbursement may be denied. Commerce expects consultants to develop a conceptual model of a site that will help to minimize the number of mobilizations required to complete any given U&C Task.

22. Will the Personnel Rate list be included in Comm 47?

The rates can be made available upon request, but they are not specifically listed in the Appendix of Comm 47.

23. Is there a U&C cost for preparing a deed restriction?

Yes, see Task 32.

And for preparing a cap-maintenance plan?

No. However, this is under consideration for next U&C schedule update.

24. Many direct push operators now offer auger drilling to 50 feet with split spoon sampling and/or well installation. If they perform both activities – direct push and drilling – at one site in the same day, can they charge both a direct push mob/demob and a drilling mob/demob?

No, Under these circumstances the direct push probe-drilling hybrid accomplishes the same activities as a conventional drill rig. Consequently, the Commerce will reimburse only MDT05 – drill rig mob/demob.

25. Can the consultant, in addition to the primary mob/demob for oversight, charge the incremental mob/demob (Task 34) since they will be conducting more than 1 task (oversight of direct push and drilling) at site in a day?

No. Under these circumstances the direct push probe-drilling hybrid accomplishes the same activities as a conventional drill rig. Consequently, the Commerce will reimburse only one consultant mob/demob. Task 34 (incremental mob/demob) cannot be applied.

26. The State rate for travel increased recently. How will the schedule be adjusted for these changes?

Current State rates are being used. Semi-annual review of the U&C schedule will assess any need for changes.

27. Will Commerce provide a copy of the labor rates, hours and list of equipment that is included in each task?

The rates can be made available upon request, but they are not specifically listed in the Appendix of Comm 47.

28. There is no task for Project Management. How are we suppose to bill for this?

Project management has been included in each Task. There will be no separate reimbursement task for project management.

29. Could a task for Private Utility Locator Services be added to the schedule?

This is currently under consideration and will be addressed during semi-annual review of the U&C Schedule.

30. Can EDB Method 504 be added to the schedule?

This is currently under consideration and will be addressed during semi- annual review of the U&C Schedule.

31. When free product abatement is conducted concurrent with groundwater sampling, why is the "Removal Activity" (FPA05) not allowed?

This activity will be reimbursed under this circumstance and will be addressed during semi-annual review of the U&C Schedule.

32. Why is the unit for Well Repair (MDT30), indicated "lump sum" rather than "well?"

This activity will be reimbursed under this circumstance and will be addressed during semi-annual review of the U&C Schedule.

33. If your remedial action involved soil excavation/disposal, does that mean all contaminated soil from investigative soil borings/mw borings have to remain on-site and be disposed of with excavated soil? Likewise – removal of all contaminated groundwater (purge water) from monitoring wells can only be reimbursed once for the site (all contaminated water must be stored on-site until site is closed) – even though it may need to be stored outside in drums several winters (freezing – possible rupturing drum) until closure is achieved, right?

No. See the current specifications for Task 4, waste disposal.

34. Where Comm 47 requires communication with Commerce, how can consultants/RPs know whether we should call/contact PECFA claim review staff or site review staff ?

Technical questions should go to site review staff. Claim questions should go to claim review staff.

35. Vapor screening: “prior department approval required if more than a single vapor screening” – what constitutes a single vapor screening? One time? One location?

This is Task 18. There is an allowance to screen for vapors, wherever suspected, at a site, only once. Additional, i.e., follow-up screenings, must have prior Commerce approval.

36. Meeting with regulator: Presentation said meeting is with regulatory staff at the regulatory agencies office – what if the meeting is at the site (so regulator can be familiar with site)? Can we still get paid?

This activity will be reimbursed under this circumstance and will be addressed during semi-annual review of the U&C Schedule.

37. The groundwater sampling task includes redox, ph, temp, etc. If I’m collecting these parameters on a well, but not collecting any samples for lab analysis (e.g., PVOC) can I still charge for groundwater sampling?

No. See specifications for Task 1.

38. If a piece of equipment is on the U&C schedule, can it be charged? For example: there is a daily charge for hand augers on the equipment schedule, but the description for the U&C schedule for hand auger boring says it includes equipment. Can we charge for the daily hand auger fee?

No. The U&C Task rates incorporate equipment costs. Any previously published schedule is no longer valid for work performed after 5/1/06.

39. Certain sites have a portion of costs, such as well installations and groundwater sampling, split between PECFA-eligible and non-eligible releases, i.e., a lot of co-ops with fertilizers and pesticides also had tanks. Does U&C apply for the field work? If so, does it still have to be reasonable?

If an approved methodology for cost separation has been developed for an occurrence, then it also applies to the U&C schedule.

40. If a site was bid out a year or two ago and the consultant bid out all commodities, do they have to still use the commodity service provider after 5/1/06?

No, provided the site is under a public bid cap or the U&C schedule.

Does it matter if the commodity provider alternative was more or less expensive?

Not to the PECFA program.

Can consultants complete commodity tasks themselves after 5/1/06 if the task had been previously bid (PECFA public bid and commodity bid) but not completed yet?

Yes, provided the site is under a public bid cap or the U&C schedule.

41. Specifications for Task 2 where it's stated "This task will be reimbursed for a complete report (1 per year)" led me to believe you could only invoice once when report is completed – no partial invoices allowed.

Partial invoicing is allowed. Reimbursement will be limited to one complete report per year.

42. Under Well Abandonment, for water column (is that the depth of well or depth to water or depth of water in well?), where it states <30 feet and then >30 feet, does that mean you always fill in the first one and then fill in the amount over 30 feet in the second one, or all of it in the second one if you are over 30 feet?

The water column is the distance between the water table and the bottom of the well. If the water column is no more than 30 feet, then use the WAB10 rate. If the water column is >30 feet, then use the WAB15 rate for the entire well.

43. Same question with regard to Direct Push for <24 feet bgs (does bgs mean borings?) and >24 feet bgs.

bgs means below ground surface. For example, if direct push is advanced to 30 feet bgs, then the first 24 feet goes under DP35, the remaining 6 feet goes under DP40.

44. And again with regard to drilling, for depth interval 0 - 25 feet bgs, 26 - 50 feet bgs, and 51 - 75 feet bgs – if you have approval for over 75 feet, where do you put that?

There is no place on the U&C invoice for this item. Provide a separate invoice, documentation (boring logs, etc.) and a copy of the Department's approval.

45. For all the stuff that needs Commerce approval to exceed (e.g., temporary shutdown can only be performed once per year without department approval), what documentation will we be required to submit to prove that, or will Commerce keep the claim reviewers informed?

There is no place on the U&C invoice for this item. Provide a separate invoice, documentation (boring logs, etc.) and a copy of the Department's approval.

46. What is meant by "Bedrock Drilling in Setup Charge" under Drilling?

Drillers spend time setting up the drill rig for drilling in bedrock.

47. What is meant by "Concrete Penetration" under Miscellaneous Drilling Activities and Supplies?

Drillers and direct push operators use a special bit to penetrate through concrete.

48. 48. Owner submits claim – is \$500 claim submittal cost eligible?

Under the U&C Schedule yes, but if the site has been sent to public bid, the scope of services will include filing the claim. In those instances, the amount established by the bid would be eligible for reimbursement, and the U&C amount (\$500) would not apply.

49. When does the 120 day-day period [in Comm 47.625 (1), for filing a claim] start? After work is completed?

Commerce will send written notification if a site RP is required to file a claim, and the 120 day-day period begins on the date of the notification. See question 51.

50. If we obtain a site, either through the public bid process or take it over from a different consultant, and have costs to submit from the previous consultant – on the next claim, who will be responsible for any penalized ineligibles from the previous consultant invoices included in the claim?

Penalized ineligibles would have to be included in the claim for PECFA to assess the penalty, so it would be the responsibility of the claim preparer to make sure no costs that are listed on the penalized ineligible list were included in the reimbursement claim.

51. If a site is won through the public bid process, what date is used to determine when the claim is due, to meet the 120 days after the scope of work is completed – i.e., do we use the consultant final report date or will we receive a letter from Commerce that states the scope of work is complete and a claim should be submitted within 120 days?

The 120-day period in Comm 47.625 (2) begins when Commerce is notified that the scope of work has been completed [47.70 (1) (a) 6.].

52. For sub-\$60K sites, if Commerce was notified that a site was following the sub-\$60K route prior to 5/1/06, does the U&C schedule apply after 5/1/06? Can work at the site proceed?

Yes. Even on the less than \$60K sites, the U&C Schedule will set the maximum reimbursement rates for tasks, and work at the site can proceed if the occurrence classification form has been completed.

53. Can an annual PECFA claim be submitted for less than \$50K, not including interest?

Yes, annual claims can be submitted regardless of how much has been spent.

54. Comm 47.337 and 47.339 – Department approval required to exceed \$40K cap. The 40K cap has been reduced to 20K, effective 5/1/06.

Department approval is required prior to incurring any site investigation costs after 5/1/06 that exceed \$20K, except as exempted under Comm 47.339. Comm 47.339 shows that where the \$60K cap notification was submitted prior to 5/1/06, the investigation cost cap can continue to be disregarded. However, the ability to newly submit \$60K notifications is discontinued as of 5/1/06.

55. On PECFA Form 1A, the registered consultant must sign. Should the project manager who is a registered PECFA consultant sign the form, or should the claim preparer, who is also a registered PECFA consultant, sign?

The Form 1A should be signed by the Project Manager, if the consulting firm is filing the claim.

56. For PECFA consulting firms, in Comm 5.80, what is the definition of employee for “proof of employing at least one” – e.g., lease EE, admitted EE for payroll, temporary hire EE, partner, sole proprietor?

The intent of this phrase is that a registered PECFA consultant is employed at all times while PECFA work is being conducted.

57. If new tanks are in the same tank bed as old tanks, but no assessments were performed on the old tanks, will reimbursement be based on pre-approved methodology, or be ineligible?

If the old tanks were removed or upgraded after 12/22/88, an assessment was required. If one was not completed, there is no coverage. For this situation, see Comm 47.02 (4)

58. There is a consultant who continually fails to comply with DNR codes, works on PECFA sites and just doesn't bid on sites. Does DNR send letters? How is it determined that they failed to meet DNR requirements? Will Commerce staff or DNR staff make that call?

Comm 5.10 states that Commerce may suspend or revoke credentials for individuals who exhibit a pattern of failing to complete remediations at PECFA sites. For DNR sites, Commerce will work collaboratively with the DNR.

59. How will an individual who is not a licensed PECFA individual (i.e., P.E., geologist, hydrologist, or soil scientist) provide proof of working under a PECFA licensed individual? For example, should the professional licensed individual's credential be submitted for the non-licensed individual, i.e., P.E. license number and /or license?

Yes, Commerce will require submittal of a copy of the license that the individual is working under, at the time of registration and renewal.

60. I am a single member LLC (d/b/a) with PE license. Will my company now have to be registered with state registration and licensed project manager _____ department?

All consulting firms and all employees performing PECFA work must be registered with the Department of Commerce. During the registration process, Commerce checks for compliance with applicable requirements of the Department of Regulation and Licensing. See Chapters 443 and 470 of Wisconsin Statutes for additional requirements relating to professional engineering, geology, hydrology and soil science.

61. Comm 5.81 (4) (c) – Does the requirement for “proof of being supervised” allow for a non-registered (with DR&L) consultant to be supervised by a registered professional outside his/her organization?

Yes, however PECFA consulting firms must be registered with PECFA and must be registered with the Department of Regulation and Licensing.

62. Comm 5.80 (2) (d) – In the absence of employing a registered professional, is there a mechanism to comply with this section?

No. The Department of Regulation and Licensing is primarily responsible for registration and licensing requirements relating to professional engineering, geology, hydrology or soil science.

63. Regarding the 25% reimbursement on new tanks in an old tank basin – would this be a scenario where SI was done, remedial action or groundwater monitoring showing almost ready to close – stable decreasing plume, and then groundwater suddenly shows an increase in benzene (for example). These are then covered for 25% to complete to closure? How would you suggest handling the old release? Close old BRRTS # and open a new one? New release and BRRTS # are eligible for 25% reimbursement, and old release and BRRTS # are under whatever cap they fall under, but we should be able to close it, right?

For this situation, see Comm 47.02 (4) to determine if the 25% reimbursement is applicable.

64. Can a lender charge a fee for filing a PECFA claim if they are terminating financing and the consultant is unwilling to file the claim?

Yes, up to \$500. However, if the site was part of the public bid process and the scope of services included filing the claim, a consultant must file the claim.

65. How will Commerce keep the lenders informed of cumulative costs, to avoid ineligibles?

Until PECFA has made a reimbursement decision, Commerce will not be able to provide this information, so lenders will need to track the costs based on the invoices they pay. Once PECFA has made a reimbursement, Commerce will be able to provide that information.

66. Upgrade tracker system to show the maximum deductible as well as what has been paid. That way the viewer would know what amount the RP is responsible for.

This upgrade is not likely, as these amounts vary substantially.

67. Who gives approval for moving electrical /sewer lines (i.e., no task on U&C schedule) – site review staff or claim review staff?

These approval requests should be forwarded to the appropriate site reviewer.

68. Could a current PECFA-eligible RP apply for a sliding scale deductible if they have not yet submitted a claim for reimbursement?

Yes, contact claim review staff at 608-266-3713.

69. Can an RP in the SI stage now submit a PECFA claim every year, or must they wait until the SI is completed or other milestones have been met?

An annual claim submittal will be allowed before the SI is complete, provided PECFA has enough information to evaluate that the discharge was from an eligible source, and can determine the number of occurrences at the site.

70. Related to standardized invoice and summary forms: I was wondering if you have researched Minnesota's Petrofund system, which is similar to the changes you intend to make. I have filled out many Petrofund applications and can see how there might be problems with your system. (Petrofunds' system has its problems as well.) Below are some issues I see:

- a. You need to have some sort of change order form for costs that exceed maximum unit costs, if there are valid reasons for the exceedences.

Commerce will have a process as of 5/1/06 [47.325 (3)] – Department approval is required.

- b. Some of the maximum costs listed seem rather low (especially if you are lumping time to complete a task with other costs not listed on the form that are required – for example, groundwater sampling, sample collection, which would have to include costs for bailers, gloves, ice to preserve sample, water for field blanks, etc.).

The U&C costs appear to be within a range expected to complete these tasks, based on public hearing comments.

- c. It will be difficult for consultants to convert their invoices to fit within your invoice form (again due to lumped costs, etc.).

The intent of the standardized invoice is to simplify the audit process; consultants can always use the standardized invoice as their own.

- d. Your costs should, and don't seem to, reflect the difficulty of the task specific to the site (in terms of # of wells, distance to travel, size and # of buildings for vapor screening, etc.).

See b. above.

71. Will the updated U&C schedules be available on the Commerce Web site?

Yes, each updated schedule will be available on the Web site.

72. Will the list of penalized ineligibles be posted on the Commerce Web site?

The list of penalized ineligibles will not be posted as a separate document. It is included in Comm 47, which is available at www.legis.state.wi.us/rsb or can be purchased from Document Sales and Distribution at 800-362-7253

73. When a claim spans 2006 (costs prior to 5/1/06 and after 5/1/06), will we need to include all claim forms (2A, 2B, and U&C invoice)?

Yes, all forms that are required when the activity occurred will need to be in each claim. For example, commodity work performed in April 2006 would need forms 2b and bids enclosed with the claim.

74. Invoicing: well installation example – do we need to attach soil boring logs and well construction reports to the driller invoice?

Yes. Submit a copy of logs and well construction reports for Tasks 12, 13 or 14.

75. If we draft the soil and well logs for cross-sections and reports, do we then attach the soil and well logs to the consultant's invoice also?

No, attach the completed report. See next question for submittal of unfinished report.

76. For invoicing and reports, if we work on a report over several invoicing periods, do we attach the report or tables or maps to each relevant invoice, or can we attach a page saying "refer to invoice # ____ for completed report." Or, if we reach a milestone or are requested to submit a claim before a report is finished (e.g., 2 year monitoring cycle), how should we or what should we attach for supporting documentation?

For each invoice requesting payment for report work, attach the work performed (e.g., text, tables). To avoid this, one invoice can be marked for the entire report, but reimbursement will be made only if a complete report is provided.

77. Will consultants be able to modify the U&C standard invoice (most entries will not apply to any one invoice) for simplification on both our ends?

Commerce is working on a form format that does allow for only the checked activities to display.

78. In the past, if costs appearing on an invoice were determined to be non-eligible, they were noted as costs N/C (not claimed) and not included in the total costs requested for reimbursement. Can the claim submitter continue with this practice, or will these N/C costs now be deemed penalized ineligibles just for appearing on the invoice?

The standardized invoice does not allow this to happen. For U&C work, there should not be any costs claimed or paid out of the PECFA loan that are not on the schedule.

If an RP agrees to pay higher costs, out of pocket, will Commerce deny interest costs over the maximum?

Commerce will deny interest costs for any costs that exceed the U&C schedule, which are paid out of the loan.

79. Filling out Report Breakdown form, and we complete the report for less than the lump-sum amount – can we get the full lump-sum amount?

Commerce has removed the Report Breakdown Form from the standardized invoice.

80. What happens if a client requests standard invoices using time and cost? These invoices are forced to match standard invoice and summary form costs, but the actual time spent is inflated to “make the calculation work.”

The consultant invoice can reflect time and materials if the RP requests it, however, Commerce will only reimburse for activity completed and claimed on the standardized invoice.

81. What needs to be submitted in claims if we don't need to bid commodity services on public bid sites? Just the invoices? No bids?

Invoices are sufficient.

82. Does the \$999 or less commodity cap go away with the implementation of U&C?

The \$1,000 exclusion applies where commodity bidding is required. Commodity bidding is not required if activities are on the U&C schedule or included in the public bid process.

83. If we use the U&C schedule, we don't need to provide three competitive bids?

Correct.

84. Can reports and correspondence be billed on a lump-sum basis like the rest of the activities, rather than a time-and-materials basis? Why is the report summary form necessary?

The Report Breakdown form is no longer part of the invoice.

85. Will there be a U&C task for filling out the annual report?

Annual Reporting is currently addressed in Task 7.

86. It is my understanding that when bidding on sites, now and after 5/1/06, we will not have to follow the U&C cost schedule. Basically the winning bid will set a cost cap for the work being bid on, correct? If this is true, how will this fit into the new standardized invoice and summary form, and will costs be reimbursable if they exceed the U&C costs but do not exceed the bid amount?

The standardized invoice form is not required to be completed for bid sites – those sites can be invoiced in the same manner as prior to 5/1/06. For sites in the bid process, the U&C schedule does not apply.

87. How should consultants handle invoices that will straddle the 5/1/06 effective date (i.e., invoices that are not sent on a calendar month)? We don't have the option of billing as we want/need. I guess we just shouldn't do work on the project during this time (April-May) in 2006.

The standardized invoice must be used for all U&C work performed after 5/1/06.

88. Will Commerce contact the lender for interest payment through check issue date, upon a change of lender or a termination of financing?

Yes, Commerce will send a fax requesting the final interest for the loan, as has been the procedure in the past.

89. Can exceedences >\$20K be submitted now?

Yes.

90. Does U&C Limited Excavation (Task 24) include analytical costs?

Yes, Task 24 includes laboratory analytical costs and sample collection. However, the Laboratory Schedule (Task 33) must reflect those analytical costs.

91. Sites that are subject to bid and have been sitting for 2 years (+)?

During the Informational Sessions, Commerce became aware of 14 sites that may be subject to public bidding. The list has been forwarded to appropriate Commerce and DNR staff.

92. Under Comm 5.10 (1) (a) 12. k. – how many instances, or what percent of projects constitutes a “pattern?”

A pattern is considered two or more instances.

93. Regarding projects that have established remedial action caps:

a. Do these sites come under U&C costs?

Yes, as of 5/1/06, except for caps established through the public bid process.

b. If not, and if they were recently established caps, will they be sites that will be established on the "site priority" listing?

Not applicable. See a.

c. And, if conditions change during the remedial activity, will Commerce consider changes in the RA and associated cost, or will the project be sent out to public bid?

If conditions change and additional funds are requested, the department(s) will review the site and may determine that the site is subject to competitive public bidding.

94. For public bidding, if a consultant wins a bid for a defined scope of work, and if site conditions either change or are different than depicted in the bid, can the cost cap be modified?

Yes, see Comm 47.70 (3) Change of Circumstances.

95. For public bidding:

a. What happens if a consultant doesn't complete a scope of work for the bid amount?

The consultant can be disqualified from bidding [Comm 47.67 (1) (a) 1.] and/or further work on the project [Comm 47.70 (4) (a) 1.]. A disqualified individual or firm may protest or appeal the disqualification.

b. Who pays for the scope of work to be completed?

PECFA.

c. Who finishes the work?

Not the disqualified individual or firm.

d. Any penalties for the RP in that case?

None, unless a new contract is not executed within the required time period.

96. If after SI, consultants have an idea for remedial action, should they suggest a remedial alternative, or will all sites go to bidding? How much flexibility will there be?

A suggested remedial alternative from the current consultant is always helpful to move the site to closure.

97. How long will it take for Commerce to respond to 'written approval' requests? There appeared to be many instances where work was limited and additional work needed 'written approval' from Commerce. This is fine – actually, I prefer it because it cuts down on ineligibles/appeals and gives credibility to the consultant for informing the owner of additional work. However, I worry that Commerce is going to get pretty busy and might get backlogged on approvals and hence slow the project down – which hurts the owner because the site isn't closed, and the consultant now has to find some other work to fill that void and tends to take awhile to get back to this one, etc.

Commerce expects to respond in a reasonable period of time.

98. Will the State notify the consultant when annual reports, periodic reports and monitoring for progress reports are due for each specific PECFA site?

Periodic progress reporting [Comm 47.62], Monitoring the progress [Comm 47.70], Deferral reporting [Comm 47.63 (5)] and Annual reporting [Comm 46.10] all specify deadlines. Commerce does not plan to send reminders.

99. For public bidding – consultant disqualification – if a consultant is disqualified via the bid process, who will be checking to ensure they don't work on a site? For an RP, a new site to the program, therefore causing their project to be ineligible?

A bid submitted by a disqualified bidder will not be considered for evaluation. This is different than a disqualified bid from a qualified bidder. The announcement of intent will only identify bids that were evaluated.

If an individual or firm is disqualified from further work on a project, this does not prevent further bidding; and vice versa, an individual or firm disqualified from bidding may continue to work on other sites.

100. Is it just the consultant that signed the bid or is it the entire company that gets disqualified for the 6, 12, or 24 months?

"Individual or firm" may be disqualified from bidding and/or further work on a project [Comm 47.67 and/or 47.70 (4)].

101. Are DNR and Commerce technical reviewers going to be content with the streamlined reports provided, that all the required information is enclosed (i.e., more tables, maps and figures with less verbiage)?

Periodic progress reporting [Comm 47.62], Monitoring the progress [Comm 47.70], Deferral reporting [Comm 47.63 (5)] and Annual reporting [Comm 46.10] are intended to help Commerce financially manage the sites better, answer jurisdiction issues earlier, and provide basic data if for some reason a "report" is not generated. Reports per the NR 700 series (e.g., site investigation, closure) will continue to be submitted to the appropriate agency as hard copies.

102. There is a lot of room for interpretation of “failed ... scope of work” in 47.70 (4). How will this be judged? Black and white or subjectively? Will the consultant have a response period prior to disqualification notice?

Yes, there is room for interpretation. Disqualification from further work is a serious matter and Commerce will make a defensible determination. The ability for the individual or firm to appeal rather than protest demonstrates that this action will not be made without in-depth thought.

103. Will the intent to select a low bid by PECFA be announced (written letter) to all bidders as well as the RP?

The announcement stating the Bureau’s intent will identify the least costly qualified bid, bids that have been disqualified, and all other bidders. This announcement will be mailed to the RP and posted on the Commerce Web site.

104. Can sites which have declared <\$60K prior to 5/1/06 be sent to bid as a result of occurrence classification routing, or by the decision of a regulator?

Yes, if either department estimates the cost will exceed \$60K, the site is subject to the public bidding process. Public bidding is also an option if activities anticipated to be performed are not on the U&C schedule.

105. Regarding sites which are directed to be bid jointly with another site, or “bundled.” Separate RPs with separate sites with contiguous plumes of contamination. Can these sites be individually remediated based on U&C costs, or must work stop for bundled bid process to be completed?

Assuming the site or sites are subject to the public bidding process, work must stop [Comm 47.30 (2) (p)] within five days after Commerce issues its decision that the site is subject to the public bidding process.

106. For sites where there is failure to complete the occurrence classification form by the 5/31/06 deadline, can the form be completed in the following week? How will it be completed? Will it still be on the Web site?

Yes, the occurrence classification form may be completed after the 5/31/06 deadline. Costs (including interest) between 5/1/06 and the date the form is received are not eligible for reimbursement. After 5/31/06, the form will no longer be available via the Commerce Web site. Instructions will be posted, but the submitter will have to request and complete a paper version of the form.

107. What is meant by “within a required time period” and how was that time period established? Is very vague.

“Within a required time period,” as stated in Comm 5.10 (1) (a) 12. j., refers to the time periods that are specified in Comm 47.62, 47.63 (5), 47.70 and Comm 46.10.

108. Does Comm 47 require submittal of maps, tables, etc., so subsequent consultants can use and alter pre-existing work?

The new reporting requirements have provisions to submit/attach maps and tables. At this time, it is unclear how usable or available this information will be to subsequent consultants.

109. If closure is denied following completion of work under a public bid, and the additional work requested by DNR/Commerce does not justify putting it out to bid again, can the RP use one of the other bidders of that phase of work, rather than going with the winner of the bid? In the instance that I am thinking about, the RP does not like his experience working with this consultant at all and will not work with him again unless forced to do so. If this is a possibility, must the new consultant use the original bidder's rates or U&C?

If the scope of work in the bid document is not complete, or there are contingencies described in the bid document, the RP must use a consultant who submitted a bid. If the scope of work in the bid document is complete and the Department(s) determine that bidding is not cost effective for the additional work required, the U&C Cost Schedule must be followed, and the RP can execute a new contract with a consultant of their choosing.

110. It was not clear in the Neenah informational session whether a consultant must submit \$20K exceedance requests and U&C exceedance requests to the claim review staff or to the field project managers.

SI cap exceedance and U&C exceedance requests should be sent to field project managers (site review staff). A completed U&C Standardized Invoice including total project costs must accompany cap exceedance requests.

(End)

File reference: Comm 47/Training Q&As